as a part of the dominant estate. No doubt this is the correct rule, both at common law and under the statutes. In the case of *Lever* v. *Grant,* 139 Mich. 273, the court apparently held that if the servient estate was sold for taxes, the easement was extinguished. In 8 MICH. L. REV. 361, in an Article entitled "Taxation of Easements" by Bradley M. Thompson, attention is called to the fact, that if such was the holding in that case, the court was in error. The court in the principal case did not call attention to this phase of *Lever* v. *Grant* and we must assume that the former case can be distinguished from the present one. In any event it would seem that the owner of a dominant estate in Michigan may now feel assured that he is in no danger of losing an easement, appurtenant to his estate, lost through the neglect of the owner of the servient estate, to pay the taxes assessed thereon.

WATERS AND WATER COURSES—OWNERSHIP OF GREAT PONDS—COMMON LAW.—Bill in equity to enjoin defendants entering upon and fishing and shooting upon a pond containing about 175 acres. The plaintiffs claim title to the pond extending back to 1631 through a grant by the Plymouth Council. The defendants claim that this is a public pond upon which the public has the right of free fishing and free fowling. The Colonial Ordinance of Massachusetts in 1641, the provisions of which were by the Provincial Charter extended to Maine in 1692, provided that all ponds containing ten acres or more were public ponds. *Held,* even before this Ordinance, that was the common law of Maine and there never was private ownership of great ponds in Maine. *Conant et al.* v. *Jordan et al.* (1910), — Me. —, 77 Atl. 938.

By the Provincial Charter of 1692 the provisions of the Colonial Ordinance of 1641 were extended not only to Maine, but to the Plymouth Colony which at that time became a part of the Massachusetts province. In *Watuppa Reservoir Co.* v. *City of Fall River,* 154 Mass. 305, 28 N. E. 257, 13 L. R. A. 255, the Supreme Court of Massachusetts held that private ownership of lakes of ten acres or more could have been obtained before 1692 in the then Plymouth Colony, or, in other words, that the rule that the title to ponds of ten acres or more was in the public, was not the law of any section of the Massachusetts province until the Colonial Ordinance of 1641 was established as the law in that section. *Comm.* v. *Alger,* 7 Cush. 53. *Inhabitants of West Roxbury* v. *Stoddard,* 7 Allen 158. In the principal case, however, the Maine court held that the rule set forth in the Colonial Ordinance was always the law of Maine, even before 1692, and there never was private ownership of ponds of ten acres or more. The rule of public ownership of lakes of ten acres or more as set forth in the Colonial Ordinance has been adopted by judicial decision by the states of Iowa and Vermont, *Noyes* v. *Collins,* 92 Iowa 566; *Fletcher* v. *Phelps,* 28 Vt. 257, 262, and by New Hampshire which limits the size of the pond to fifteen acres or more, *Dolbeer* v. *Suncook Waterworks Co.,* 72 N. H. 562, 58 Atl. 504, while in Wisconsin the test is whether the lake is meandered or navigable, *Rossmiller* v. *State,* 114 Wis. 69, 89 N. W. 839, 58 L. R. A. 93. In the majority of states, however, lakes are the subject of private ownership. *Hardin* v. *Jordan,* 140 U. S. 371; *Smith* v. *Rochester,* 92 N. Y. 463, 44 Am. Rep. 393; *Lembeck* v. *Nye,* 47 Ohio St. 336, 8 L. R. A. 578; *Clute* v. *Fisher,* 65 Mich. 48; *Stoner* v. *Rice,* 121 Ind. 51, 6

L. R. A. 387. This conflict of authority is due partly to the different views which the courts entertain as to what, if any, were the rules of the common law on the subject. BREWSTER, CONVEYANCING § 113.

WILLS—PROBATE—EFFECT OF—TESTAMENTARY DOCUMENT—CODICIL—CONSTRUCTION—LIST OF NAMES AND SUMS OF MONEY—CONSTRUING AS GIFT OF LEGACIES.—Testator made his will three months before his death. A document duly executed, but containing no attestation clause, bearing date the day of his death, containing eight names with a sum of money set opposite each, but without words of gift or any other indication of intention, was allowed probate. One of the beneficiaries under the will took out summons to vary the certificate of the Master by omitting therefrom the names of these persons contained in the codicil and certified therein to be legatees. *Held,* admission to probate establishes conclusively that the document is testamentary in character. It remains for this court to construe it in order to give effect to the testator's intention. Since the document is testamentary, it must be construed as a gift to each person of the amount set opposite his or her name. *In re Barrance; Barrance* v. *Ellis* [1910] 2 Ch. 419, 79 L. J. (Ch.) 544.

The effect of the probate of an instrument as conclusive of its testamentary character is well settled though the Michigan courts do not so hold, *Smith* v. *Boyd,* 127 Mich. 417. But the court of construction may nevertheless decline to give effect to it. As early as 1788 the English Court of Chancery held, in *Gawler* v. *Standerwick,* 2 Cox 15, that though a codicil which had been executed by the executors of testator's will and others declaring their understanding of the will of the testator as indicated by him on his deathbed, was a testamentary document, since it had been proved in the Spiritual Court, yet the court could and did construe it as void. The only testamentary characteristic of the so-called codicil in the principal case is the form of its execution. The report does not state whether or not it was attached to the will or found with it after the testator's death. It was argued by counsel opposing its admission that so far as the intention of the testator appeared, the document might be a list of creditors or of debtors or a list of any other character. The court expressly overruled a decision made a short time before this one which held—and with better reason, it would seem,—that a precisely similar document was void for uncertainty. The court dismissed that case with the following remark: "With regard to the case of *In re Campsill,* I cannot discover that it is reported elsewhere than at page 548 of the Law Times Journal of April 16, 1910; and I think it must have turned on the particular circumstances of the case, and cannot have been intended to lay down any rule of general application." The American courts have gone a great way in admitting documents to probate as testamentary, but have always, it seems, required some indication in the paper itself that it was intended as testamentary. JARMAN WILLS, Ed. 6 p. 19 says: "It is sufficient that the instrument, however irregular in form or inartificial in expression, discloses the intention of the maker respecting the posthumous destination of his property." See *Sullivan's Estate,* 130 Pa. St. 342, *Byers* v. *Hoppe,* 61 Md. 206, *Cover* v. *Stem,* 67 Md. 449.